IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARIA N. GRACIA, Plaintiff, v. SIGMATRON INTERNATIONAL, INC., Defendant.	)))))))))	Case No. 2011 CV 7604 Judge Edmond E. Chang

SIGMATRON INTERNATIONAL INC.'S STATEMENT OF UNDISPUTED MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1

Defendant SigmaTron International, Inc.'s ("SigmaTron"), by and through its attorneys Timothy J. Riordan and Tiffany L. Carpenter of Howard & Howard Attorneys PLLC, for its Statement of Undisputed Material Facts Pursuant to Local Rule 56.1, respectfully states as follows:

STATEMENT OF UNDISPUTED MATERIAL FACTS[1]

SigmaTron

1. SigmaTron, founded in 1994, is a full service electronics manufacturing service provider with a network of manufacturing facilities in the United States, Mexico, China, and Vietnam. SigmaTron serves a diversified set of markets which include: appliance, consumer, electronics, fitness, industrial electronics, medical/life sciences, semiconductor, telecommunications, and automotive. (Exhibit 1-Greg Fairhead's Declaration ¶¶ 4-5).

[1]For purposes of this Motion, SigmaTron has not disputed any of Plaintiff's allegations of sexual harassment, sex discrimination, national origin discrimination, or retaliation since most have no bearing on the legal issues raised by SigmaTron's Motion for Summary Judgment. LR 7.1(D)(1)(b); however, SigmaTron reserves the right to dispute such allegations in future submissions/trial proceedings. As discussed more fully below, there is no genuine issue of material fact in this case that would warrant the denial of SigmaTron's Motion.

2. Greg Fairhead has held the title of Executive Vice President of SigmaTron since March 2000 and presently serves as a member of SigmaTron's Executive Committee. (Exhibit 2-Fairhead Dep. 14: 9-14).

3. In November 2007, Mr. Fairhead succeeded to the responsibilities of James Henderson, SigmaTron's then-Director of Operations, when Mr. Henderson left the employ of SigmaTron. (Exhibit 2-Fairhead Dep. 99: 1-10).

4. When he took over Mr. Henderson's duties, Mr. Fairhead concluded that the operations needed to get back on track and he took a hands-on approach to correct problems that were adversely affecting SigmaTron's operations (including attendance, tardiness, quality, workmanship) by, among other things, attending every production meeting and constantly communicating with managers (including Patrick Silverman-the then Plant Manager) to strictly adhere to the rules that had been established many years before but that had not been strictly followed and enforced by supervisors in years past under Mr. Henderson's watch. (Exhibit 2-Fairhead Dep. 97: 21-98: 20; 99: 20-100: 21; 101: 20-102: 7; 104: 15-19).

Plaintiff's Knowledge of Solder Technology

5. Plaintiff began her employment with SigmaTron on July 12, 1999 as an Assembly Line Inspector on the second shift; a union position. (Exhibit 4, SMT-GRACIA0041-0043).

6. On March 27, 2006, Plaintiff's was promoted to Assembly Supervisor; a non-Union position. (Exhibit 5, SMT-GRACIA—0040, 0073).

7. As the Assembly Supervisor, Plaintiff had day-to-day responsibility to produce assemblies for SigmaTron, which included:

- the output and quality of Printed Circuit Boards;
- the scheduling of lines and product flow;
- the hiring of Assembly Department team members;
- the directing of team members;

- the approving of Personal/Vacation days for team members;
- the disciplinary actions for team members;
- the training of team members. (Exhibit 5, SMT-GRACIA-0040).

8. To accomplish her responsibilities as an Assembly Supervisor, Plaintiff had the authority to:

- Stop production due to quality, safety, and customer requirements;
- Schedule Assembly personnel to meet production goals;
- Enforce any disciplinary action(s) per company policy;
- Re-assign any employees due to business demands. (Exhibit 5, SMT-GRACIA-0040).

9. It is extremely critical in SigmaTron's business that SigmaTron follow its customer's specifications exactly. The customer's product performance, as well as, SigmaTron's reputation/success in the industry depends on this occurring on each and every assembly manufactured. If specifications are not followed according to the customer's written requirements, then SigmaTron can be held liable for the damages/cost of the product, which can be quite significant. Further, the contamination of solder types can be very expensive; the solder in one machine alone can cost over $20,000 to replace due to contamination. (Exhibit 6, SMT-GRACIA0130-132, Exhibit 7, SMT-GRACIA0143; Exhibit 1-Greg Fairhead's Declaration ¶ 10).

10. SigmaTron regularly conducts training classes, taught by an industry recognized/certified trainer, to keep employees informed and current with their job classification(s). (Exhibit 6, SMT-GRACIA0130-133, Exhibit 7, SMT-GRACIA0134-143).

11. On June 16, 2008, Plaintiff completed a Component Preparation class that focused on the critical difference between Leaded Assemblies, Lead Free Assemblies, and RoHS Compliance (Reduction of Hazardous Substances) and the important characteristics/distinctions of each. (Exhibit 6, SMT-GRACIA0130-131; Exhibit 7, SMT-GRACIA0134, 138-143).

12. One of Plaintiff's primary responsibilities as an Assembly Supervisor was to train her employees on various aspects of assembling circuit boards-including soldering and the differences in solder types. (Exhibit 6, SMT-GRACIA0130; Exhibit 5, SMT-GRACIA-0040).

Plaintiff's Was Not Meeting SigmaTron's Legitimate Job Expectations After Mr. Fairhead Began Requiring Strict Adherence to SigmaTron's Rules

13. Plaintiff was tardy in excess of 90% of the time between April 22, 2008 and July 21, 2008. During a meeting on July 21, 2008, with Mr. Silverman and Mr. Fairhead, Plaintiff was warned that if her tardiness continued, she would be subject to further disciplinary action up to and including immediate termination. (Exhibit 8, SMT-GRACIA0078-82).

14. Plaintiff was tardy on twenty more occasions during the next three months that followed (from July 21, 2008 through October 15, 2008). (Exhibit 9, SMT-GRACIA 83-87; Exhibit 12, Gracia Dep. 97: 1-98: 1-6).

15. On October 15, 2008, Plaintiff was again told that her tardiness continued to exceed a tolerable level; that her tardiness demonstrated to the SigmaTron employees she supervised that she had a carefree attitude about her job responsibilities. Plaintiff was further informed that her tardiness caused shift start up issues and that it is "hard to expect…line workers to be on their stations on time when [she was] lax[ed] in doing so." (Exhibit 2, Fairhead Dep. 98: 1-3. As a disciplinary measure, Plaintiff was suspended for two days without pay and told that if she missed any scheduled time in the next 90 days immediate termination would result. (Exhibit 9, SMT-GRACIA0083). Plaintiff could not have been suspended without Mr. Fairhead's approval of same. (Exhibit 1, Greg Fairhead's Declaration ¶ 7).

16. On October 23, 2008, Plaintiff was spoken to after she took a 35 minute break from 9:15 AM-9:50 AM in the purchasing department; Plaintiff was warned against taking

excessive breaks and against disrupting other employees during her breaks. (Exhibit 10, SMT-GRACIA0092).

17. On October 30, 2008, Plaintiff was spoken to after it was discovered during a very important plant tour on October 28, 2008 with a potential SigmaTron customer that Plaintiff had failed to display certain required visual aids and customer instructions, for which she was responsible, on the Assembly Line. (Exhibit 11, SMT-GRACIA0095; Exhibit 12, Gracia Dep. 114: 2-18; Exhibit 13, Silverman Dep. 94: 9-95: 7).

18. On October 30, 2008, Plaintiff was spoken to after she took 70 minutes for lunch although she was only allowed 60 minutes. (Exhibit 14, SMT-GRACIA0096; Exhibit 12, Gracia Dep. 114: 19-24).

Incident that led to Plaintiff's Termination

19. On December 4, 2008, Eduardo Trujillo, Plaintiff's close associate/friend observed that Plaintiff's assembly line workers were knowingly failing to follow the strict standard of solder technology on a customer's assembly in violation of both SigmaTron's policies and the customer's specifications. (Exhibit 15, SMT-GRACIA0097; Exhibit 16, Trujillo Dep. 17: 1-19, 22-24; Exhibit 12, Gracia Dep. 81: 13-82: 8; Exhibit 13, Silverman Dep. 106: 10-13).

20. Mr. Trujillo approached Plaintiff and told her that he had observed that she was allowing products to be soldered incorrectly; however Plaintiff did nothing to stop the action. (Exhibit 15, SMT-GRACIA0097; Exhibit 16, Trujillo Dep. 17: 1-19, 22-24).

21. Mr. Trujillo knew that this activity was totally unacceptable to SigmaTron and most likely in violation of the customer's specification, so he immediately told Mr. Silverman

what he had seen. (Exhibit 13, Silverman Dep. 106: 2-13; Exhibit 15, SMT-GRACIA0097; Exhibit 16, Trujillo Dep. 22: 10-21; 23:1).

22. Once Mr. Silverman confirmed that Plaintiff was mixing the solder types on a customer's assembly, he had production immediately stopped; he segregated the product that had been mixed; and he reported the incident to Mr. Fairhead. (Exhibit 13, Silverman Dep. 59: 13-15, 22-60: 2, 11-20; Exhibit 2, Fairhead Dep. 40: 2-41: 18; 47: 8-11, 16-19; 48: 3-18; Exhibit 15, SMT-GRACIA0097).

23. Mr. Fairhead went to the area where the incident had occurred and questioned the employees who were out on the assembly floor when the incident occurred and had them explain to him what had taken place. (Exhibit 2, Fairhead Dep. 52: 2-53: 8).

24. When Mr. Fairhead met with Mr. Trujillo the next day, Mr. Trujillo confirmed that: 1) Plaintiff was knowingly mixing solder types in the assembly process, (Exhibit 2, Fairhead Dep. 40:13-18); 2) Mr. Trujillo had talked to Plaintiff about the issue; 3) Plaintiff did not stop and correct the issue; 4) Mr. Trujillo knew that this activity was totally unacceptable to the company and most likely in violation of the customer's specification; and 5) Mr. Trujillo had told Mr. Silverman about it. (Exhibit 2, Fairhead Dep. 43: 13-18; 44: 9-15; Exhibit 16, Trujillo Dep. 17: 1-19; Exhibit 15, SMT-GRACIA0097).

25. Mr. Fairhead and Ms. Miedema met with Plaintiff about the Incident, at which time, Plaintiff admitted that her workers had been mixing solders and that, based on her training which focused on the importance of following customer specifications and not mixing solder types, she knew that allowing her workers to mix the solders was unacceptable. (Exhibit 2, Fairhead Dep. 38: 6-11; 39: 3-4.; Exhibit 1, Fairhead Declaration ¶ 11).

26. Plaintiff knew it was important to follow customer's specification, had signed her initials (MG) that she had received the customer's requirement/assembly instructions that clearly specified that leaded solder only be used, and conceded that Mr. Fairhead believed that Plaintiff's actions were unacceptable. (Exhibit 12, Gracia Dep. 80: 21-81: 12; 89: 17-22; Exhibit 6, SMT-GRACIA0130-132, Exhibit 7, SMT-GRACIA0143; Exhibit 1, Fairhead Declaration ¶ 12).

27. On December 5, 2008, Mr. Fairhead terminated Plaintiff's employment with SigmaTron because of Plaintiff's admitted, knowing failure to require her production workers to adhere to customer specifications and company policies, and her unprofessional cavalier attitude towards her job responsibilities. (Exhibit 15, SMT-GRACIA0097; Exhibit 17, SMT-GRACIA00098-99; Exhibit 1, Fairhead Declaration ¶¶ 11, 13-14).

28. There is no reason other than those provided in Plaintiff's disciplinary notices and formal write ups why Plaintiff was disciplined. (Exhibit 13, Silverman Dep. 83: 3-7; 87: 5-21; 88: 5-89:10; 94: 2-95: 24).

No Evidence Exists in Support of Plaintiff's Claim of National Origin Discrimination

29. Plaintiff is a female of Hispanic ethnic origin. (Exhibit 18, SMT-GRACIA0015).

30. Eduardo Trujillo is a male of Hispanic ethnic origin. (Exhibit 19, Miedema Declaration).

31. At the time of her termination, Plaintiff was the only Assembly Supervisor at SigmaTron. (Exhibit 2, Fairhead Dep. 25: 3-15).

32. At the time of Plaintiff's termination, Mr. Trujillo held the title of Auto Insertion Supervisor and was responsible for maintaining the automation equipment; Plaintiff did not have

any of the same responsibilities as Mr. Trujillo. (Exhibit 16, Trujillo Dep. 7: 7-13; 30: 18-24; Exhibit 3, Miedema Dep. 74: 22-75: 2).

Evidence in Record Fails to Support Plaintiff's Claim based on Alleged Sexually Hostile Environment

33. The only facts alleged by Plaintiff in support of her sexual harassment claim relate to the following allegations:

- On one occasion, Mr. Silverman allegedly pulled on the turtle neck of Plaintiff's sweater. (Exhibit 12, Gracia Dep. 115: 9-12, 20).

- Mr. Silverman forwarded 17[2] e-mails (the "E-mails") to Plaintiff and others male SigmaTron employees that Plaintiff claims to be offensive including:

    - 1 e-mail on May 8, 2007 (Exhibit 24, SMT-GRACIA0206-223)
    - 1 e-mail on June 12, 2007 (Exhibit 24, SMT-GRACIA0240)
    - 6 e-mails on August 24, 2007 (Exhibit 24, SMT-GRACIA0271-286, 288-290)
    - 1 e-mail on August 31, 2007 (Exhibit 24, SMT-GRACIA0309-310)
    - 1 e-mail on September 12, 2007 (Exhibit 24, SMT-GRACIA0312)
    - 1 e-mail on November 14, 2007 (Exhibit 24, SMT-GRACIA0345-346)
    - 1 e-mail on November 15, 2007 (Exhibit 24, SMT-GRACIA0347)
    - 1 e-mail on December 10, 2007 (Exhibit 24, SMT-GRACIA0378-0379)
    - 1 e-mail on January 30, 2008 (Exhibit 24, SMT-GRACIA0390)
    - 1 e-mail on April 21, 2008 (Exhibit 24, SMT-GRACIA0430-431)
    - 1 e-mail on June 24, 2008 (Exhibit 24, SMT-GRACIA0516)
    - 1 e-mail on July 1, 2008 (Exhibit 24, SMT-GRACIA0527)

- On the occasions Mr. Silverman brought pastries for SigmaTron staff, Mr. Silverman hand delivered a pastry directly to Plaintiff (which she accepted) (Exhibit 12, Gracia Dep. 120: 22-23; 149: 9-22).

- On at least one occasion, Mr. Silverman asked to stay at Plaintiff's home after a Cubs game so he could avoid the long drive to his home in Rockford. (Exhibit, 12, Gracia Dep. 104: 21-105: 5; 119: 1-3).

- On more than one occasion, Mr. Silverman texted Plaintiff (sometimes at night) and asked if they should grab dinner or meet up. (Exhibit 12, Gracia Dep. 119: 23-120: 3).

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[2] As discussed further below, Plaintiff is precluded from pursuing her claims based on 9 of the 17 Emails because Plaintiff received them more than 300 days before the EEOC charge she filed on November 6, 2008.

- On at least one occasion, Mr. Silverman insisted that Plaintiff attend and ride with him to the Industry Trade Show at the Rosemont Convention Center where SigmaTron had a booth on display. (Exhibit 12, Gracia Dep. 147: 21-148:16).

- On one occasion in December 2007, Mr. Silverman called Plaintiff multiple times from a SigmaTron supplier's party in an effort to persuade her to join him and another employee at the party. (Exhibit 12, Gracia Dep. 101: 3-20).[3]

34. Plaintiff did not understand any of Mr. Silverman's text messages to suggest that Mr. Silverman wanted to have a sexual encounter with Plaintiff. (Exhibit 12, Gracia Dep. 120: 10-12, 16).

35. Mr. Silverman never told Plaintiff that he wanted to have sex with her nor did Mr. Silverman ever ask Plaintiff to have sex with him. (Exhibit 12, Gracia Dep. 105: 22-106: 8).

36. Mr. Silverman never told Plaintiff that she was required to do anything when he gave her the pastries (which she accepted) or asked her to the movies-no quid pro quo. (Exhibit 12, Gracia Dep. 105: 16-21; 120: 22-23).

37. Plaintiff never told Mr. Silverman that she did not want to receive the E-mails (which he intended to convey as jokes); she did not even communicate to him about the e-mails nor did she tell Mr. Silverman that she did not appreciate receiving the e-mails he sent. (Exhibit 12, Gracia Dep. 128: 22-129: 8; Exhibit 13, Silverman Dep. 33: 16-18).

SigmaTron was Not Negligent in Discovering or Remedying the Alleged Harassment

Plaintiff Did Not Follow SigmaTron's Sexual Harassment Policy and Did Not Give SigmaTron Any Indication that Plaintiff Felt She Was Being Sexually Harassed

38. SigmaTron's Policy Against Harassment requires employees who believe they may have been harassed or who receive reports of harassment of others to, among other things,

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[3] As discussed further below, Plaintiff is precluded from pursuing her claims based on the alleged telephone calls she received in December 2007 because Plaintiff received these telephone calls more than 300 days before the EEOC charge she filed on November 6, 2008.

immediately report it to SigmaTron's Human Resources Manager or Corporate Human Resources Manager, Ms. Miedema. (Exhibit 20, SMT-GRACIA0114-115).

39. Plaintiff had previously read and signed an acknowledgement of receipt of the policy and knew that she was required to report any harassment to Ms. Miedema or Christine Kucera, Elk Grove Plant HR Administrator (Exhibit 21, Kucera Dep. 4: 15-18), but Plaintiff never complained to Ms. Miedema or Ms. Kucera about any allegations of sexual harassment. (Exhibit 20, SMT-GRACIA0113-115; Exhibit 12, Gracia Dep. 140: 3-18; Exhibit 3, Miedema Dep. 45: 19-20; Exhibit 19, Miedema Declaration ¶ 11).

40. Plaintiff never told Ms. Miedema about any of the E-mails. (Exhibit 12, Gracia Dep. 129: 2-8; Exhibit 3, Miedema Dep. 115: 18-19; Miedema Declaration ¶ 10).

41. Plaintiff never told Ms. Miedema or Mr. Fairhead that Mr. Silverman had allegedly sent Plaintiff late night text messages inviting her to go out with him. (Exhibit 19, Miedema Declaration, ¶ 6; Exhibit 2, Fairhead Dep. 130: 12-15).

42. Plaintiff never told Ms. Miedema that Mr. Silverman had allegedly requested an outside-of-work relationship with her (by allegedly asking Plaintiff if he could come over to her home on nights of Cubs games or when he was downtown to sleep over, or to the movies). (Exhibit 19, Miedema Declaration ¶¶ 6-9; Exhibit 12, Gracia Dep. 129: 9-130: 6).

43. Plaintiff never told Ms. Miedema that Plaintiff had allegedly pulled on the turtleneck of Plaintiff's sweater. (Exhibit 12, Gracia Dep. 133: 13-134: 3).

Silverman was a Co-Employee of Plaintiff's and Not Plaintiff's "Supervisor"

44. Mr. Silverman could issue discipline to Plaintiff, but Mr. Silverman did not have the power to independently hire, promote, suspend, or terminate Plaintiff. (Exhibit 1, Fairhead Declaration ¶ 7; Exhibit 13, Silverman Dep. 99: 24-100: 3; 113: 1-3).

45. In fact, Mr. Silverman never recommended that Plaintiff be terminated; Mr. Silverman did not even know, before it happened, that Plaintiff was going to be terminated. (Exhibit 13, Silverman 54: 18-20; 113: 12-15).

Plaintiff's Complaint

46. On November 6, 2008, Plaintiff filed a charge of discrimination based on sex discrimination, national origin discrimination, and retaliation with the Equal Employment Opportunity Commission ("EEOC Charge"). (Exhibit 22, SMT-GRACIA0105-106).

47. Although the first page of Plaintiff's First EEOC Charge alleged that Plaintiff had been discriminated against by SigmaTron as early as October 15, 2008 and as late as October 30, 2008, the second page indicates that Plaintiff had been discriminated against by SigmaTron as early as August 29, 2007 and as late as November 3, 2008. (Exhibit 22, SMT-GRACIA0105).

Plaintiff's Lawsuit

48. On October 25, 2011, Plaintiff filed the instant Complaint alleging the following two Counts against SigmaTron: Counts I-"Discrimination, Harassment, Ands[sic] Hostile Work Environment in Violation of Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000E, *et seq.*"; and Count II- "Retaliation". (Exhibit 23, Complaint ¶¶ 19-32).

This 9th day of April, 2013

SIGMATRON INTERNATIONAL, INC.,
a corporation,

By: /s/ Tiffany L. Carpenter
One of its Attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on April 9, 2013, I electronically filed a true and correct copy of the foregoing document with the Clerk of this Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

By: /s/ Tiffany L. Carpenter
One of its Attorneys

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